

1 THE HONORABLE MARSHA J. PECHMAN
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67 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 BRANDON TOLE, an individual,

11 Plaintiff,

12 v.

13 AMAZON.COM SERVICES LLC; a Delaware
14 Limited Liability Company,

15 Defendant.

16 Case No. 2:22-cv-00594-MJP

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18 **DEFENDANT'S RESPONSE TO
19 PLAINTIFF'S MOTION FOR
20 LEAVE TO FILE THE
21 CONFIDENTIAL SETTLEMENT
22 AGREEMENT UNDER SEAL AND
23 FOR LEAVE TO FILE
24 SUPPLEMENTAL BRIEF IN
25 RESPONSE TO THE COURT'S
ORDER ON JOINT MOTION TO
APPROVE CONSENT DECREE**26 After significant negotiations, the parties in this case executed a carefully drafted
settlement agreement, under which (among other things) they mutually agreed to keep the terms
of their settlement confidential, unless a court specifically ordered disclosure of the settlement
terms. No such order has been issued. Instead, in an apparent attempt to circumvent the mutually
agreed-upon confidentiality provision, which Amazon reserves all rights to enforce, Plaintiff
Brandon Tole has unilaterally asked this Court for "leave" to file the settlement agreement under
seal. That motion should be denied as moot in light of the Court's recent order on Mr. Tole's
motion for attorneys' fees and costs, which was the last point of dispute between the parties in this
litigation, and which gave independent reasons for its ruling without needing to reference the

1 settlement agreement. Dkt. 167; *see Rudolph v. California Two Bunch Return, LLC*, 2017 WL
 2 7101147, at *2 (C.D. Cal. May 19, 2017) (dismissing claim as moot where “[p]laintiff has already
 3 received all of the relief he seeks from the Court”). In addition, there is no basis for Mr. Tole’s
 4 request, and his attempt to unwind the terms he himself negotiated for and agreed to should be
 5 denied for that separate reason.

6 Mr. Tole and Defendant Amazon.com Services LLC entered into a settlement agreement
 7 on November 19, 2024. The following day, on November 20, 2024, the Court entered an Order
 8 Vacating the Trial Date and Pretrial Deadlines and ordered the parties to file a joint motion for
 9 entry of a consent decree. Dkt. 144. The parties submitted a Joint Stipulated Motion for Approval
 10 and Entry of Consent Decree and Proposed Decree on December 20, 2024. Dkt. 147. On January
 11 24, 2025, the Court granted the parties’ motion and entered the consent decree with a minor
 12 modification to one of the decree’s proposed “findings.” Dkts. 163, 164. Specifically, the Court
 13 omitted the following sentence: “This Decree conforms with the Federal Rules of Civil Procedure
 14 and USERRA and is not in derogation of the right and privileges of any person.” Dkt. 164 at 2.

15 Mr. Tole now unilaterally asks this Court for leave to file the settlement agreement, in clear
 16 violation of the settlement’s terms, which require the parties to keep the terms confidential. Mr.
 17 Tole, for his part, fails to explain why any of this is warranted. The Court has already entered the
 18 consent decree, *see* Dkts. 163, 164, and Mr. Tole does not argue—or even suggest—that any right,
 19 obligation, or duty under that decree turns in any way on the sentence the Court omitted from the
 20 final decree. Mr. Tole asserts that the Court’s January 24 order “require[s]” the parties to submit
 21 the settlement agreement. Dkt. 167 at 2-3. But the order simply states that the Court “remains
 22 open” to “further consideration of [the omitted] proposed findings,” if the parties “provide
 23 sufficient information and explanation as to why such findings are proper.” Dkt. 163 at 2. That
 24 the Court remained “open” to considering the issue further is not a mandate to disclose the
 25 settlement terms. Rather, it reflects only the Court’s contemplation of an optional submission.
 26 Should the Court in fact order the disclosure of the settlement agreement or any of its terms,

1 Amazon will of course comply. But, whereas here, a confidentiality provision, “facilitates, and
 2 indeed makes possible, the final compromise of many disputes,”¹ Mr. Tole should not be permitted
 3 to bypass it by proactively soliciting a court order.

4 Amazon respectfully asks the Court to deny Mr. Tole’s motion.

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6 RESPECTFULLY SUBMITTED this 14th day of February 2025.

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¹ Laurie Kratky Dore, *Secrecy by Consent: The Use and Limits of Confidentiality in the Pursuit of Settlement*, 74 Notre Dame L. Rev. 283, 384 (1999).

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DEFENDANT'S RESPONSE TO PLAINTIFF'S
MOTION FOR LEAVE – 4
(Case No. 22-CV-594)

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CERTIFICATE OF SERVICE

I certify under penalty of perjury that on February 14, 2025, I caused to be electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send a notification of the filing to the email addresses indicated on the Court's Electronic Mail Notice List.

Dated: February 14, 2025

s/ Erin Koehler

Erin Koehler, Legal Practice Assistant